

**REMARKS/ARGUMENTS**

After the foregoing Amendment, claims 1 and 3-13 are currently pending in this application. Claims 1, 6, 10, and 12 have been amended and claim 2 has been canceled. No new matter has been introduced into the application by these amendments.

**Claim Rejections - 35 USC § 102**

Claims 1, 4, 6 7, and 10 stand rejected under 35 USC § 102(b) as being anticipated by U.S. 4,976,547 to Hisanaga. Applicant respectfully traverses this rejection.

Claim 1 is directed to a mixing element that is fixed on the lid (10) of a laboratory test vessel which comprises a stirrer element (30) that is a hollow cylinder (53) and is provided with a central sealing cap (32) that is a membrane that can be pierced or broken through. The stirrer element can be placed into the test vessel and the stirrer element is connected to a coupling piece (50). The stirrer element, which rotates about a longitudinal axis of the laboratory test vessel, is provided with cutting and/or crushing elements situated directly adjacent to cutting edges on a retainer sleeve (40).

In contrast, Hisanaga is directed to a continuous two-liquid type mixer which allows liquid to flow into and out of the device. Hisanaga does not teach or suggest

a lid with protrusions and a seal to engage and be hermetically sealed to the laboratory test vessel, since it is not a lid, but a flow through system.

The Office Action points to elements 12 and 14 of Hisanaga as being a lid. However, element 12 is a feeding channel and element 14 is a liquid inlet. Hisanaga's feed channel 12 and liquid inlet 14 are not "a lid", as recited in claim 1. Further, even if the feed channel and liquid inlet were construed as a lid, the feed channel and liquid inlet lack "protrusions and a seal to engage and be hermetically sealed to the laboratory test vessel", as recited in claim 1. Claim 1 also recites a stirrer element "provided in the lid", but Hisanaga does not appear to teach "a stirrer element" in the feed channel and liquid inlet. The Office Action points to rotor 22 as the stirrer element, but rotor 22 is not provided in either the feed channel or liquid inlet.

The stirrer element of Hisanaga also appears to be on or part of the driveshaft. No coupling piece is provided to releasably engage a drive. In addition, claim 1 recites "a retainer sleeve" having cutting edges. The Office Action alleges Hisanaga teaches a retainer sleeve, but fails to point where Hisanaga teaches or even suggests a retainer sleeve. In fact, Hisanaga fails to teach a retainer sleeve. The cylindrical container 10 has rows of blades 20, but is in fact a container and not a retainer sleeve. Also, claim 1 recites "a central sealing cap". The Office Action asserts Figure 1 of Hisanaga teaches this limitation. However, neither Figure 1 nor

any other part of Hisanaga's disclosure teach or suggest a "central sealing cap", as recited in claim 1. To the extent that Hisanaga teaches a flow-through processing device, this would be directly contrary to Hisanaga's teachings.

For these reasons, Hisanaga, alone, fails to teach the limitations of claim 1.

Claims 4, 6 7, and 10 are dependent upon claim 1, which the Applicant believes is allowable over the cited prior art of record for the same reasons provided above.

Additionally, claim 4 further recites that the retainer sleeve is provided as an auxiliary element that has an inner opening and that can be pushed on or removed from the device.

In contrast, as discussed above, Hisanaga fails to teach any retainer sleeve. Furthermore, Hisanaga fails to teach a retainer sleeve that is an "auxiliary element that has an inner opening and that can be pushed on or removed." The Office Action points, generally, to Figure 1 of Hisanaga, but neither Figure 1 nor any other part of Hisanaga's disclosure teaches or suggests this limitation.

Based on the arguments presented above, withdrawal of the 35 USC § 102(b) rejection of claims 1, 4, 6, 7, and 10 is respectfully requested.

**Claim Rejections - 35 USC § 103**

Claims 2 and 5 stand rejected under 35 USC § 103(a) as being unpatentable over U.S. 4,976,547 to Hisanaga in view of U.S. 6,338,569 to McGill. Applicant respectfully traverses this rejection.

Claim 2 has been canceled. Thus, the 35 USC § 103(a) rejection with respect to claim 2 is now moot. Claim 1, as amended, recites the limitation “the central sealing cap (32) is a membrane that can be pierced or broken through”, which was previously recited in claim 2. Hisanaga fails to teach or suggest a “central sealing cap”, as discussed above, and to the extent that Hisanaga teaches a flow-through processing device, this would be directly contrary to Hisanaga’s teachings. With respect to McGill, the heat-sealed lid is on the opposite side from the stirrer element.

Claim 5 depends from claim 1 and recites that the lid is a disposable lid and comprises a screw closure or a snap closure that is complementary to a corresponding element on the laboratory test vessel. As the Office Action admits, Hisanaga fails to teach a lid with a screw or snap. McGill does not remedy the deficiencies of Hisanaga. The Office Action asserts McGill teaches a lid with a snap closure. However, McGill states that the lid 31 is heat sealed in position. See column 9, lines 45-47.

Based on the arguments presented above, withdrawal of the 35 USC § 103(a) rejection of claims 2 and 5 is respectfully requested.

Claims 3 and 8 stand rejected under 35 USC § 103(a) as being unpatentable over U.S. 4,976,547 to Hisanaga. Applicant respectfully traverses this rejection.

Claim 3 depends from claim 1 and should be similarly patentable over Hisanaga.

Claim 8 depends from claim 1 and further recites that the lid has a rubber sealing ring, a clamping seal, or a hydraulic labyrinth lip seal in order to form a hermetic seal between an interior of the laboratory test vessel and the external environment.

In contrast, Hisanaga does not teach or suggest any type of sealing lid. The Office Action alleges Figures 1 and 11 of Hisanaga “would have suggested a rubber sealing ring to one of ordinary skill in the art”, but this assertion is unclear. Figure 1 of Hisanaga shows a sectional view of the Hisanaga mixer and Figure 11 shows liquid injection inlets on rotary stirring blades. Neither Figures 1 and 11, nor any other part of Hisanaga’s disclosure, teach or suggest a lid that has a rubber sealing ring, a clamping seal, or a hydraulic labyrinth lip seal. In fact, this is contrary to the flow-through arrangement required.

Based on the arguments presented above, withdrawal of the 35 USC § 103(a) rejection of claims 3 and 8 is respectfully requested.

Claims 9, 12 and 13 stand rejected under 35 USC § 103(a) as being unpatentable over U.S. 4,976,547 to Hisanaga in view of U.S. 3,060,702 to Price. Applicant respectfully traverses this rejection.

Claim 9 depends from claim 1 and should be similarly patentable. Price does not address the deficiencies of Hisanaga, as stated above.

Claim 12 depends from claim 6 and recites that when the laboratory test vessel is standing upright, a homogenate therein can be analyzed or tempered manually or by machine through the membrane, which can be pierced or broken through, in the disposable lid without having to remove the lid from the laboratory test vessel.

Claim 13 depends from claim 12 and further recites that the pierced or broken-through membrane in the disposable lid can be hermetically resealed in an area using a snap lid made of plastic or metal.

In contrast, Hisanaga fails to teach a “membrane, which can be pierced or broken through, in the disposable lid without having to remove the lid from the laboratory test vessel”, as recited in claim 12, or a “pierced or broken-through membrane in the disposable lid...”, as recited in claim 13.

Price fails to address these deficiencies. Price does not teach any membrane in a lid, particularly a membrane in a lid that can be pierced or broken through. The Office Action points to column 5, lines 31-40 of Price, but this section only describes

the oval shape of the tanks, the presence of an eddy chamber, an impeller, and a spindle in Price. There is absolutely no discussion here, nor anywhere else in Price, of a lid with a “membrane, which can be pierced or broken through, in the disposable lid without having to remove the lid from the laboratory test vessel”, as recited in claim 12, or a “pierced or broken-through membrane in the disposable lid...”, as recited in claim 13.

Hisanaga, in view of Price, thus fails to teach or suggest these limitations of claims 12 and 13.

Based on the arguments presented above, withdrawal of the 35 USC § 103(a) rejection of claims 9, 12 and 13 is respectfully requested.

Claim 11 stands rejected under 35 USC § 103(a) as being unpatentable over U.S. 4,976,547 to Hisanaga in view of U.S. 6,916,114 to Verkerk. Applicant respectfully traverses this rejection.

Claim 11 is dependent upon claim 1, which the Applicant believes is allowable over the cited prior art of record for the same reasons provided above. Verkerk fails to address the deficiencies of Hisanaga.

Based on the arguments presented above, withdrawal of the 35 USC § 103(a) rejection of claim 11 is respectfully requested.

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**Application No.:** 10/526,647

**Conclusion**

If the Examiner believes that any additional minor formal matters need to be addressed in order to place this application in condition for allowance, or that a telephone interview will help to materially advance the prosecution of this application, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience.

In view of the foregoing amendment and remarks, Applicant respectfully submits that the present application, including claims 1-13, is in condition for allowance and a notice to that effect is respectfully requested.

Respectfully submitted,

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